



Prompt Legal Services Pty. Ltd.

259A Keilor Road, Essendon, Melbourne, 3040
property@promptlegalservices.com.au

Ph: (03) 9379-0877

www.promptlegalservices.com.au

Deposit Release

(Section 27 of the Sale of Land Act.)

Overview

Victorian legislation can allow a vendor to gain access to a deposit before settlement but the release of deposit under a sale of land contract is not a straightforward process. In some circumstances, the deposit cannot be released. The whole process usually takes 3-4 weeks.

The Process

Note: If there is no mortgage or caveat registered on title, do directly to step 4;

1. A Discharge Authority must be completed and signed by ALL loan parties;
2. The Discharge Authority is provided to your bank by us (except Westpac) who usually require a 7-14 day turnaround time;
3. At the same time, Section 27 information is requested from your bank;
4. After the vendor signs a section 27 form, it is provided to the purchaser's solicitor for their client's approval and signature.
(Note: IF there is a mortgage, Section 27 loan information on the Bank's letterhead is also to accompany the section 27 form);
5. Once the purchaser provides the section 27 form signed by the purchaser, it can be faxed to the agent who can then release the deposit (usually net of their commission fees).

Must the Purchaser sign the Section 27 form?

As there is little incentive for the purchaser to sign the form (as they are not getting any benefit out of it), they sometimes simply do not respond. We or the Real Estate agent may keep the pressure on by calling or emailing their representative, but at the end of the day, cannot force them to sign.

Also, there are circumstances where the purchaser may object to the release of deposit. Examples of circumstances where they may object are as follows;

1. If the loan (including any redraw available) is greater than 80% of the contract purchase price.
(Note: the purpose of this rule is to ensure the purchasers are not left stranded at settlement with a mortgage that cannot be paid out.);
2. Where the vendor has been in default under the loan.

What if the Purchase simply does not respond?

If the Purchaser does not provide a signed section 27 form or objection thereto within 28 days from when the form is provided, then the deposit can automatically be released.

(Note: the 28 days commences from when the form is provided, not from contract date).